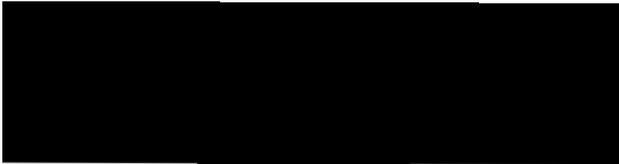




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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FILE: [Redacted]
XLA 88 510 02016

Office: TEXAS SERVICE CENTER Date: MAR 23 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Southern Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant had been convicted of three felonies in the United States and was found inadmissible under section 212(a)(10) of the Immigration and Nationality Act (the Act), now 212(a)(2)(B) of the Act.

On appeal, the applicant requests that his application be reconsidered as he has a family to support.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii).

"Felony" means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

An alien is inadmissible if he has been convicted of two or more offenses (other than purely political offense), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were five year or more. Section 212(a)(2)(B) of the Act.

The record reflects that on December 22, 1989, the applicant was charged with violating section 12034(c) PC, shooting from a motor vehicle; section 245(a)(2), assault with firearm; and section 246.3 PC, discharge firearm with gross negligence. On May 16, 1990, the applicant was convicted of a felony for each charge. On June 28, 1990, the applicant was sentenced to serve five years in prison. [REDACTED]

On appeal, the applicant acknowledges his felony convictions, but claims that it was in self defense. The applicant asserts, "it was a regretful accident."

The AAO is not the proper forum for disputing the validity of state convictions. Whether or not the applicant was provided with the opportunity to defend himself is not an issue for the AAO to decide. Accordingly, as of this date, we find the applicant has been convicted of three felonies and, therefore, is ineligible for the benefit being sought. 8 C.F.R. § 245a.2(u)(1)(iii). The applicant is also inadmissible due to his multiple criminal convictions for which the aggregate sentence to confinement was five years. Section 212(a)(2)(B) of the Act.

Within the legalization program, no waiver is available to an alien convicted of a felony or three or more misdemeanors committed in the United States. Furthermore, no waiver is available to an alien inadmissible under section 212(a)(2)(B) of the Act. An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 245a of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.